IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 2536 of 1996

Between:

1 B.Prasad, S/o. Venkateswara Rao.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

2 M.Srinivasa Rao, S/o. Lakshmaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

3 M.Kondaiah, S/o. Mallaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

4 M.Prabhakar Reddy, S/o. Malla Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

5 K.K.S.S.N Raju, S/o. Rama Raju.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

6 J.Murali, S/o. Satyanarayana.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

7 B.Anil Kumar, S/o. Krishna Murthy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

8 P.Uppalaiah, S/o. Muthaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

9 Sk. Asif, S/o. Ismail.

A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

10 Ch.Srinivasa Rao, S/o. Nageswara Rao,
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

11 G.Sudhakar Reddy, S/o. Laxma Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

12 M.A.Raheem, S/o. Khadar.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

13 Sk.Abdul Azeez, S/o. Mastan Ali.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

14 L.Maraiah, S/o. Pochaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

15 A.V.Ramana Reddy, S/o. Narayana Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

16 G.Ramakrishna, S/o. Balaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

17 M.Satyam, S/o. Somaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

18 N.Ravinder, S/o. Achaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

19 Md. Mahamood Ali, s/o. Mastan Ali,
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

20 V.Anil Kumar, S/o. V.V.R. Prasad,
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

21 V.Ramarao, S/o. Venkateshwara Rao.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

22 V.Krishnaiah, S/o. Venkaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

23 Ch.Govinda Reddy, S/o. Sidi Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,

Nalgonda.

24 B.Ramulu, s/o. Ramachandru,
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

25 Y.Ramakrishna Rao, S/o. Sethurama Rao.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

26 P.Mariyanna, S/o. Lordaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

27 G.Srinivas, S/o. Ramulu.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

28 V.Ramreddy, S/o. Obul Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

29 P.Satyanarayana, S/o. Balakotaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

30 T.Danial, S/o. Janaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

31 N.RAjaratnam, S/o. Lakshmaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

32 A.Kumara Swamy, S/o. Narsaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

33 T.Muthyalu, S/o. Thirupathaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

34 Y.Krishnaiah, S/o. Venkaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

35 J.Venkat Reddy, S/o. Narayana Reddy.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

36 N.Venkateshwar Rao, S/o. Jagannadha Rao.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

37 B.Nageshwar Rao, s/o. Venkaiah.
A.P.State Irrigation Development Corp. , Miryalaguda Division,
Nalgonda.

..... PETITIONERS

AND

1 The Government of A.P., Rep. by its Secretary.
Irrigation and Command Area Development Dept., Secretariat,
Hyderabad.

2 The Government of A.P., Rep. by its Secretary.
Finance and Planning Dept., Secretariat,
Hyderabad.

3 A.P.State Irrigation Development Corporation, Hyderabad

Rep. by its Vice Chairman and Managing Director,

4 Executive Engineer, A.P.State Irrigation Development Corporation,
Miryalaguda Division, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly a writ in the nature of Mandamus, declaring the action of the respondents in not regularising the services of the Petitioners on completion of their
5 years of service as on 25/11/1993 in terms of G.O.Ms.No. 212 dated 22/04/1994 as totally unjust, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to regularise the services of the petitioners' w.e.f. the date of their completion of 5 years of services in terms of G.O.Ms.No.212, dated 22/04/1994 with all consequential benefits.

Counsel for the Petitioner:MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 and 2: The Govt. Pleader for Irrigation and command Area

Counsel for the Respondent Nos.3 and 4:MR.TADDI.NAGESWARA RAO

The Court made the following:

ORDER:

Petitioners employed in various positions in the A.P. State Irrigation Development Corporation, a State Government undertaking, seek regularisation of

services in terms of the orders of the Government in G.O.Ms.No.212, dated 22-04-1994 and an appropriate direction to the respondents for granting the benefits of regularisation.

The 37 petitioners are employed variously as Pump Operators, Watchmen, Fitter-cum-Pump Operators, Welders, Electricians, Drivers, Work Inspectors, Helpers and in like services. They claim that they have completed five years of service and have become eligible for regularisation of services in terms of Government orders in G.O.Ms.No.212. They assert that the respondents, in particular, the third respondent-the A.P. State Irrigation Development Corporation has nevertheless failed to give them the benefits of regularisation.

The petitioners further contend that the third and fourth respondents have identified all the employees in the Corporation including the petitioners herein and sent a list of eligible persons for regularization to the respondents No.1 and 2, in terms of the orders in G.O.Ms.No.212. They also state that having put in regular and continuous service for
more than eight to eleven years in the third
respondent-Corporation, they entertained a legitimate expectation of regularisation in service, more particularly, since they are not in a position to secure alternative employment at this stage. The reliefs sought in the writ petition are founded on the above factual assertions and the premises flowing therefrom.

The respondents No.1 and 2 have not chosen to file any counter affidavit. The General Manager (Finance) of the third respondent has filed a counter affidavit. To the extent relevant and material for the purposes of this writ petition, the counter affidavit asserts that the financial position of the Corporation is extremely shaky. The establishment charges, according to the Corporation, are met out of the incomes generated by the Corporation from the works allotted to it for execution. In paragraph No.5 of the counter affidavit, the critical financial position of the Corporation is set out. It is contended that no capital contribution to the Corporation has been made by the Government during 1994-95. It is also asserted that raising institutional finance is also not
possible and that in the circumstances, the third
respondent-Corporation has initiated plans for retrenchment of surplus workmen duly following the provisions of Industrial Disputes Act.

Heard Sri S.Lakshma Reddy, learned counsel for the petitioners. None for any of the respondents and no representation is made on their behalf either.

Responding to the petitioners claims for regularization under G.O.Ms.No.212, the respondent-Corporation pleads (in its counter) that on account of the critical financial position of the Corporation, the conditions of G.O.Ms.No.212 are not fulfilled in the case of the respondent Corporation and the Corporation has also sought exemption from the
Government from the obligation to comply with the orders in G.O.Ms.No.212 indicating its inability to absorb all its workers, having five years standing, as on 25.11.1993. In response thereto, the Government is said to have been permitted the respondent-Corporation to retrench surplus workmen by noting that the orders in G.O.Ms.No.212 do not prohibit such conduct by the Corporation. The Corporation further contends that as retrenchment of a large number of workmen is necessitated on account of its critical financial position, compliance with the orders of the Government in G.O.Ms.No.212 and regularising the services of existing casual workers is not possible.

G.O.Ms.No.212 enumerates a scheme for regularizing the services of persons appointed on Daily Wage/NMR or on consolidated pay basis, who are continuing on the date of commencement of the Government Order. The G.O. spells out the Government's stand that the persons of who worked continuously for a minimum period of five years and are continuing as on 25-11-1993 be regularised subject to fulfillment of certain conditions, as set out in the G.O.
inter-alia existence of clear vacancies of the posts considered necessary to be continued as per workload is a condition precedent for an order of absorption. The G.O. also requires that the clearance of the Government in the Finance and Planning (FW.PC.III) Department should be obtained before the orders are issued for regularisation or absorption. These conditions are apart from other conditions with regard to age, qualifications and compliance with the applicable rule of reservation.

From the averments in the counter affidavit filed by the third respondent Corporation, it is difficult to conclude, particularly, in a proceeding under Article 226 of the Constitution of India, that the petitioners' legitimate and legal entitlement to

absorption or regularisation of service has been established. In the circumstances, a Mandamus as prayed for by the petitioners cannot be granted.

In the facts and circumstances of the case, the writ petition is disposed of directing the third respondent-Corporation to consider the cases of the petitioners for their eligibility for absorption or regularisation in service in accordance with G.O.Ms.No.212, dated 22-04-1984 and any other Government Orders extant and relevant in this area including any current policy of the third respondent-Corporation. In considering the cases of the petitioners as above directed, the third respondent-Corporation would be at liberty to consider its current financial position as also future expectation of its financial position in the matter after consultation/approval of the appropriate authorities, as per law.

The writ petition is disposed of accordingly. There shall be no order as to costs.

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GODA RAGHURAM, J

November 17, 2004.

YCR/PGS

To

1 The Secretary, Irrigation and Command Area Development Dept.,

The Govt. of A.P., Secretariat, Hyderabad.

2 The Secretary, Finance and Planning Department, The Government

of A.P., Secretariat, Hyderabad.

3 The Vice Chairman and Managing Director, A.P. State Irrigation

Development Corporation, Hyderabad.

4. The Executive Engineer, A.P.State Irrigation Development

Corporation, Miryalaguda Division, Nalgonda District.

5. 2 C.D. copies.